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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Estados Unidos Mexicanos,

10 Plaintiff,

11 | vs.

12 Diamondback Shooting Sports, Inc., *et
13 al.*,

Defendants

NO. 4:22-cv-00472-TUC-RM

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL ANSWERS
TO INTERROGATORIES**

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1 **I. Introduction**

2 Defendants' motion to compel should be denied, first, because Defendants have
3 failed to propound reasonably tailored discovery requests, and then compounding that
4 error, they filed this motion "without prior personal consultation with the other party and a
5 sincere effort to resolve the matter," in violation of L.R. 7.2 and without conferring on
6 agreed custodians and search terms as required by this Court's Order establishing protocols
7 for document discovery. ECF.79. Defendants admit that the Government has offered to
8 meet and confer on custodians and search terms, as required by ECF.79, but Defendants
9 insist that it would be a "waste of time and effort" for Defendants to engage in such
10 discussions. Defendants have also exceeded the permitted number of interrogatories based
11 on their compound and duplicative drafting for these requests. The Government offered to
12 withdraw this objection if Defendants would agree to propound no more interrogatories
13 without showing good cause and mutually limit document requests to a total of 150.
14 Defendants rejected this offer and instead chose to stand on their own numerosity
15 objections, which they used to answer none of the Government's interrogatories as
16 propounded in Plaintiff's Second Set of Interrogatories to Defendants.

17 In addition to these overarching issues related to Defendants' basic willingness to
18 cooperate in discovery, there are two discrete sets of legal questions about which the parties
19 have substantive disagreements, and the Government welcomes the Court's rulings on
20 those issues. The first of these is how to address the Government's disclosure of data
21 obtained from ATF that may be protected by the Tiahrt Amendment, the same provision
22 that this Court addressed previously in resolving the Government's motion to compel
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1 Defendants' business records. On this point, the Government's Tiahrt objection is not the
2 same as Defendants' overruled Tiahrt objection. However, the Government has a practical
3 proposal that will allow the Court to avoid ruling on the scope and applicability of Tiahrt.
4 The Government is also prepared to challenge the continued applicability of the Tiahrt
5 Rider, if necessary, especially as it relates to specific types of reports that the Government
6 receives from ATF which can be provided in supplemental briefing if necessary.
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8 The second legal issue involves the applicability of the public duty and act of state
9 doctrines. The Government is aware, of course, that this Court previously denied the
10 Government's motion to strike certain of Defendants' affirmative defenses based on these
11 doctrines, but that did not close the door on these issues or allow overly broad discovery.
12 As raised here, the Government provides additional case law and discussion regarding the
13 impact of these doctrines on the scope of discovery, and the Government asks that those
14 objections be sustained.
15

16 **II. Factual Background**

17 Defendants served the Government with their First Set of Interrogatories, numbered
18 1-18, on July 10, 2024. The Government provided its responses on August 4, 2024. On
19 September 23, 2024, the Defendants sent a deficiency letter, asking that the Government
20 withdraw its objections and provide supplemental responses on all of Defendants'
21 interrogatories. After some delay occasioned by Defendants' motion for a stay—and
22 refusal to engage on discovery issues while that motion remained pending—the
23 Government provided written responses to Defendants' letter on February 7, 2025, and
24 sought to schedule a personal conference to discuss Defendants' concerns as required by
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1 L.R. 7.2. The Defendants rejected the idea of a personal conference to address the
2 Government's discovery responses, stating in an email dated March 14, 2025, that "further
3 discussions are a waste of time and effort." On March 26, 2025, Defendants changed course
4 and requested to set aside some time during an already-scheduled meet and confer on the
5 Defendants' discovery responses to discuss the Government's responses. That conference
6 occurred on April 4, 2025. Approximately one hour of the parties' two-hour discussion was
7 devoted to addressing the Government's discovery responses, and that is the sole amount
8 of time that Defendants have devoted to personal consultation on all of Defendants' 128
9 document requests and 18 interrogatories. Defendants sent a follow-up letter on April 5,
10 2025, and the Government responded, as agreed, on April 11, 2025. This motion followed
11 on April 15, 2025.

15 **III. General objections, objections to definitions and instructions.**

16 The Government has advised Defendants that it is not withholding information
17 based on its General Objections. ECF.122-8.2. These objections are withdrawn. With
18 respect to the Government's objections to definitions and instructions, Defendants admit
19 that such objections are proper. ECF.122.7. The Government's objection as to time frame
20 is well-founded and should be sustained, as argued in the Government's Response in
21 Opposition to Defendants' Motion to Compel Responses to Requests for Production (RIO
22 RFP) at IX.B. Defendants' objections regarding the Government's definition of Mexico
23 are also addressed at RIO RFP, Section VI.

26 The Government has advised Defendants that it is not asserting "Mexican discovery
27 privileges," but instead is noting that government officials in Mexico are bound by

1 Mexican law in determining what information they can release and under what
 2 circumstances. The Government understands that U.S. courts are unlikely to knowingly
 3 issue any order that would require a government official in Mexico to violate Mexican law,
 4 and the Government does not believe any such circumstance will arise here. Nevertheless,
 5 the Government does object to Defendants' request that this Court "order that Mexico must
 6 produce responsive material that Mexico has refused to produce by improperly hiding
 7 behind purported Mexican law." ECF.122.8.
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10 **IV. Contention Interrogatories (Int. Nos. 2 and 4).**

11 Defendants' motion appears to seek updated responses only for Interrogatory Nos.
 12 2, 4-18. The Government takes this limitation to be an acknowledgement that contention
 13 interrogatories should be answered at a later date, as Interrogatory No. 1 (identify all
 14 persons expected to be called as a witness at trial) and Interrogatory No. 3 (identify all
 15 evidence to be used at trial) plainly qualify as contention interrogatories. *See SEC v.*
Moshayedi, 2013 WL 12172127, at *1 (C.D. Cal. Mar. 21, 2013). ("[C]ontention
 16 interrogatories which . . . require[] counsel to disclose legal theories and work product . . .
 17 are premature prior to the taking of substantial discovery, do nothing to further the
 18 adjudication of the case, and pose a greater burden than a benefit."); *HTC Corp. v. Tech.*
Props. Ltd., 2011 WL 97787, at *2 (N.D. Cal. Jan. 12, 2011) ("courts tend to deny
 19 contention interrogatories filed before substantial discovery has taken place") (internal
 20 quotation omitted) (finding contention interrogatories premature even after defendants had
 21 produced 3.7 million pages of documents, held two depositions, and scheduled two more).
 22
 23 Interrogatory Nos. 2 (admissions made by Defendants) and 4 (damage calculations) are
 24

1 also contention interrogatories, since these are matters generally produced as the parties
2 are closer to trial.

3 **1. Interrogatory No. 2 (admissions made by Defendants)**

4 To the extent that Interrogatory No. 2 seeks “previous statements,” as covered by
5 Fed. R. Civ. P. 26(b)(3)(C), it is not a contention interrogatory, and the Government
6 responded on that basis that it has no responsive documents. Defendants are incorrect to
7 assert that this response is “no substantive answer at all.” ECF.122.15. The fact that the
8 Government is not in possession of adverse statements made by Defendants should not be
9 surprising. Even so, the Government has, in accordance with the ESI protocol, offered to
10 confer with Defendants concerning search terms and custodians for an agreed search of
11 electronic records, so that Defendants can be assured that the Government has conducted
12 a reasonable search for such materials. Defendants have not responded to this request.

13 **2. Interrogatory No. 4 (damage calculations)**

14 To the extent that Interrogatory No. 4 is not a contention interrogatory and seeks
15 only currently available information about the Government’s calculation of damages, the
16 Government has produced responsive information consisting of relevant Government
17 budgets and reports. Defendants are incorrect to assert that the Government has provided
18 “no substantive answer at all.” ECF.122.16. In response to the Defendants’ request that the
19 Government produce more detailed damage information, the Government states that its
20 investigation as to damages is ongoing and this interrogatory will be updated when the
21 Government is in a position to make additional substantive statements regarding the
22 structure of its damage model and an estimate of the damages it will seek at trial.

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1 The Government's numerosity objections are also well-founded and should be
2 sustained. The Government objected to Interrogatory No. 4 on the grounds that it
3 constitutes at least 12 interrogatories, including subparts, causing Defendants to exceed the
4 permitted number of interrogatories. *See ECF.122-9.2-4, 9.* Under Rule 33(a)(1), each
5 "discrete subpart" of an interrogatory is counted as a separate interrogatory when applying
6 the 25-interrogatory limit. Although there is no precise test for determining "discreteness"
7 of interrogatory subparts, most courts, including this one, follow the "related question"
8 approach, which provides that an interrogatory's subparts are "discrete" (requiring separate
9 counting) if they are not "logically or factually subsumed within and necessarily related to
10 the primary question." *Berkadia Real Est. Advisors LLC v. Wadlund*, 2023 WL 2072494,
11 at *7 (D. Ariz. Feb. 17, 2023) (emphasis omitted) (quoting *Trevino v. ACB American Inc.*,
12 232 F.R.D. 612, 614 (N.D. Cal. 2006)). The Court recently explained the applicable test as
13 asking whether the "subsequent question [can] stand alone," or is "independent of the first
14 question," such that "the first question could be answered fully and completely without
15 answering the second." *Id.* (cleaned up) (quoting *Am. Bankers Ins. Co. of Fla. v. Nat'l Fire*
16 *Ins. Co. of Hartford*, 2020 WL 8996760, at *1 (N.D. Cal. July 9, 2020) (describing the test
17 formulated by *Kendall v. GES Exposition Serv., Inc.*, 174 F.R.D. 684, 685 (D. Nev. 1997))).
18

19 Here, Interrogatory No. 4 seeks three discrete categories of information related to
20 each of 12 separate injuries alleged in the Government's Complaint. Each subpart of
21 Interrogatory No. 4 can be answered fully and completely with respect to any one of the
22 12 alleged injuries without answering the other two subparts as to that alleged injury or the
23 three subparts as to any of the other alleged injuries. Because the subparts of Interrogatory
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1 No. 4 are not “logically or factually subsumed within and necessarily related to” each other
 2 with respect to a single alleged injury (or any of the other alleged injuries), the Court should
 3 sustain the Government’s numerosity objection and rule that Defendants exceeded their
 4 25-interrogatory limit. District courts have sustained similar objections in analogous
 5 contexts, including, for example, where a single interrogatory sought information
 6 regarding the factual basis for each denial in an answer to a complaint (as opposed to the
 7 present case, where the interrogatory seeks information related to each injury alleged in the
 8 complaint) or the factual basis for each denial to a request for admission. *See, e.g.*,
 9 *Alexander v. 1328 Uptown, Inc.*, 2019 WL 4929931, at *14 (D. Minn. Oct. 7, 2019)
 10 (“[s]erving a single interrogatory seeking ‘all facts upon which [the defendants] base such
 11 denial’ for over 50 denials [in an answer to a complaint] amounts to over 50
 12 interrogatories”).¹

13 **V. Interrogatory No. 5 (claims for restitution)**

14 Interrogatory No. 5 is overbroad to the extent that it seeks information concerning
 15 “all claims or requests for funds or other relief . . . made to any person, organization (legal
 16 or illegal), or government . . . concerning Your alleged harm from firearms related violence
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 23 ¹ *Acquired Capital I, L.P. v. Chattahoochee Mortg. & Invs. Corp.*, 2011 WL 13232095, at
 24 *4 (N.D. Ga. Feb. 28, 2011) (sustaining defendants’ objection to single interrogatory where
 25 “their answer to the complaint contains at least twenty-six denials and, therefore, the
 26 interrogatory would have at least twenty-six subparts, thereby exceeding the twenty-five
 27 written interrogatories, including subparts, that are allowed under Rule 33”); *Wildearth
 28 Guardians v. Pub. Serv. Co. of Colo.*, 2010 WL 5464313, at *4 (D. Colo. Dec. 29, 2010)
 (a single interrogatory that “itself contain[ed] distinct and separate subparts seeking
 information on the Plaintiff’s more than 100 denials [to requests for admission]” “well-
 exceed[ed] the . . . interrogatory limit”).

1 in or affecting Mexico.” *See Myles v. Cnty. of San Diego*, 2016 WL 6070328, at *4 (S.D.
 2 Cal. Oct. 17, 2016) (party need not respond to requests that are “extremely overbroad,
 3 would produce large amounts of irrelevant information, and are not tailored to the needs of
 4 this case”); *see also Excel Fortress Ltd. v. Wilhelm*, 2018 WL 6067255, at *2 (D. Ariz.
 5 Nov. 20, 2018) (“[T]he court is not obligated to impose limiting constructions on
 6 interrogatories that are overbroad . . . but may simply deny the request to compel further
 7 responses.”) (internal citation omitted).

8 The core of the request seems to be about whether the Government has sought
 9 formal restitution for the same wrongs alleged here in some other forum. To that extent,
 10 the request is not objectionable, and the Government has provided its answer: none.
 11 Defendants’ statement that the Government has provided “no substantive answer” to this
 12 interrogatory is incorrect, *see ECF.122.17*; the response plainly states that, as narrowed,
 13 the Government has no responsive information to this request.

14 Even so, the Government has offered to meet and confer on search terms.
 15 Defendants have not responded to this proposal. No order to compel is warranted.

16 **VI. Interrogatory No. 6: numbers of weapons recovered annually in Mexico**

17 Having obtained additional responsive information since providing its original
 18 response, the Government is preparing an updated response to Interrogatory No. 6,
 19 including withdrawing the numerosity objection and producing responsive documents.
 20 This updated response will be served on or about May 16, 2025. No order to compel as to
 21 the previous response is warranted.

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1 **VII. Interrogatory No. 7: how firearms are recovered and reported**

2 Defendants admitted in their September 2024 deficiency letter that the
 3 Government's answer to this interrogatory was substantively responsive, with the
 4 exception of the time frame. Defendants defined the relevant time frame in their requests
 5 as January 2004 to the present. As explained in RIO RFP at IX.G, Defendants' proposal
 6 for a 20-year lookback from the date of filing is insupportable in a case with at most a 4-
 7 year statute of limitations. In the event that the parties agree on a relevant time frame, or
 8 this Court orders a relevant time frame, the Government will update this response
 9 accordingly.

10 With respect to information regarding "how" the Government "implemented"
 11 updates and improvements to its tracking of firearms and related data through RECAF,²
 12 the Government maintains that finding a technical person to discuss how particular changes
 13 were implemented is unnecessary and not relevant to any issues in the case. To the extent
 14 that what Defendants want is information about how RECAF works and why the
 15 information collected in RECAF is accurate and reliable, the Government is willing to
 16 provide additional information on those issues but request that Defendants comply with
 17 their obligations to confer on these issues, so that the Government can ensure that
 18 information collected will be responsive and sufficient. *See ECF.79.1-2.*

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 28 ² Fiscalia General de la Republica of Mexico ("FGR") maintains a database known as
 Registro Criminal de Armas de Fuego (RECAF), which holds information on firearms
 recovered by law enforcement in Mexico.

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1 **VIII. Interrogatory No. 8: communications concerning Defendants**

2 This Interrogatory asks the Government to “[i]dentify all Your communications . . .
 3 with anyone . . . [including some carve-outs for attorney-client communications with
 4 “Counsel of Record”] concerning Defendants.” The request is written broadly, does not
 5 define “Counsel of Record” and does not exclude communications occurring after suit is
 6 filed. The Government responded appropriately to this request, objecting to the
 7 overbreadth, but providing a substantive response that, to the extent that the request sought
 8 non-privileged communications created prior to the date that suit was filed, the response
 9 was “none.” Defendants are incorrect in asserting that this is no substantive response. To
 10 the extent that Defendants seek additional assurances that a reasonable search has been
 11 conducted, the Government asks that the Court order Defendants to comply with ECF.79
 12 and propose requested custodians³ and search terms.

13 **IX. Interrogatory No. 9-13 (mitigation and contributory negligence)**

14 These requests seek information about the Government’s efforts to mitigate the
 15 harm caused by Defendants and Defendants’ allegations that the Government is somehow
 16 guilty of contributory negligence in failing to stop Defendants’ illegal activities from
 17 impacting the Mexican people. As such, they are not proper subjects for discovery.

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 27 ³ As noted in previous correspondence, the Government will accept proposed custodians
 28 by agency, rather than by name of a particular public official, if Defendants wish to proceed
 in that manner.

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1 **A. Act of State Doctrine.**

2 The act of state doctrine bars claims, counterclaims, and affirmative defenses where
 3 “(1) there is an official act of a foreign sovereign performed within its own territory; and
 4 (2) the relief sought or the defense interposed [in the action would require] a court in the
 5 United States to declare invalid the [foreign sovereign's] official act.” *Sea Breeze Salt, Inc.*
 6 *v. Mitsubishi Corp.*, 899 F.3d 1064, 1069 (9th Cir. 2018) (quoting *Credit Suisse v. U.S.*
 7 *Dist. Court*, 130 F.3d 1342, 1346 (9th Cir. 1997)). In addressing this issue previously, in
 8 the context of the Government’s motion to strike certain of Defendants’ affirmative
 9 defenses, the Court reserved judgment on the question of whether the Government could
 10 show the substantive requirements for application of the act of state doctrine. ECF.102.6.
 11 The Government now provides additional authority on these points.

12 First, the act of state doctrine applies to affirmative defenses when the governmental
 13 entity is the plaintiff. *See e.g. Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 438–
 14 39 (1964) (rejecting the argument that a sovereign plaintiff which voluntarily brings an
 15 action in American courts should be stripped of its right to invoke the act of state doctrine
 16 as a defense to a counterclaim and upholding application of act of state doctrine to bar
 17 counterclaims against a foreign sovereign plaintiff); *Fogade v. ENB Revocable Tr.*, 263
 18 F.3d 1274, 1296 (11th Cir. 2001) (invalidating defendants’ argument that the act of state
 19 doctrine should not be applied where it is raised only as a response or bar to affirmative
 20 defenses, since “[t]hat argument is inconsistent” with Supreme Court precedent); *Empresa*
 21 *Cubana Exportadora De Azucar y Sus Derivados v. Lamborn & Co.*, 652 F.2d 231, 239
 22 (2d Cir. 1981) (“Depriving a sovereign plaintiff of its act of state defense to counterclaims

would be just as arbitrary and unfair as stripping it of its right to invoke any other affirmative defense, such as the statute of limitations or res judicata"); *Bank Tejarat v. Varsho-Saz*, 723 F.Supp. 516, 521–22 (C.D. Cal. 1989) (applying the act of state doctrine and striking defendant's affirmative defenses of "setoff" and "unclean hands").

And it applies here. Initially, it is uncontroversial that Defendant's affirmative defenses challenge official acts (efforts to combat gun trafficking and cartel violence) of a foreign sovereign (the Government) in its own territory (Mexico). *Sea Breeze Salt*, 899 F.3d at 1069 (setting out two-prong test for applicability of the act of state doctrine); *see also Nocula v. UGS Corp.*, 520 F.3d 719, 728 (7th Cir. 2008) ("The decision of a foreign sovereign to exercise its police power through the enforcement of its criminal laws plainly qualifies as an act of state.") Defendants cannot claim these efforts and policies are insufficient evidence of an "act of state" while at the same time claiming that these actions are comparatively responsible for the harm alleged here. *Bank Tejarat*, 723 F. Supp. at 518.

The second prong of the applicable test is also met here because Defendant's affirmative defenses "would require the court to judge the legality of acts of [the Government] completed within [its own] territory." *Bank Tejarat*, 723 F.Supp. at 521–22. Defendant's comparative fault, mitigation of harm, unclean hands, and proximate cause defenses all aim to evaluate the "success" of the Government's efforts to stop gun trafficking and cartel violence within its border (and ultimately condemn them) in order to blame the Government for the harm Defendants' illegal conduct caused and, thus, are precluded under the act of state doctrine. *See Nocula*, 520 F.3d at 728 (barring inquiry into the appropriateness of foreign sovereign's criminal investigation and prosecution).

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1 Because the act of state doctrine bars Defendants' affirmative defense of contributory fault,
 2 the act of state doctrine also bars compelling discovery related to those defenses since such
 3 discovery would be rendered irrelevant by the doctrine's application.
 4

5 Application of the *Sabbatino* factors also weighs in favor of applying the act of state
 6 doctrine here. First, "if there is no international consensus condemning [the Government's]
 7 actions, this factor weighs in favor of applying the act of state doctrine." There is no
 8 international consensus condemning the Government's efforts to curb cartel violence.
 9
 10 Second, this case has potentially important implications for our foreign relations. *See Sea*
 11 *Breeze*, 899 F.3d at 1073 ("[T]he less important the implications of an issue are for our
 12 foreign relations, the weaker the justification for exclusivity in the political branches.").
 13 The United States clearly has an interest in the Government of Mexico succeeding in its
 14 efforts to curb cartel violence. And finally, weighing in favor of apply the act of state
 15 doctrine, "it is undisputed that the government of Mexico continues to exist." *Id.* at 1074.
 16

17 **B. Public Duty Doctrine.**

18 Under the public duty doctrine, a governmental entity is understood to have a
 19 general duty to the public as a whole, not a specific duty of care in tort to each particular
 20 person or entity that comes into contact with a governmental agency. *See e.g. DeHoney v.*
 21 *Hernandez*, 595 P.2d 159 (Ariz. 1979) (holding the state had no duty in negligence for a
 22 tort claim against a police department for failure to act); *Morgan v. D.C.*, 468 A.2d 1306,
 23 1310, 1319 (D.C. 1983) (finding that liability for wrongful death claim failed as a matter
 24 of law because police department had no general duty to protect individual citizens from
 25 harm caused by criminal conduct); *Salar v. U.S.*, 2006 WL 8441185, at *1 (D. Ariz. June
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13, 2006) (holding that under the public duty doctrine “there is no general duty of law
 enforcement personnel or agencies to protect persons from the wrongs committed by
 others.”). As one federal district court explained: “[t]he public duty doctrine does not
 merely make governmental entities immune from liability...rather, it makes them immune
 from fault because it eliminates a duty on the governmental entities in the first instance.”
In re New England Compounding Pharmacy, Inc. Prod. Liab. Litig., 251 F. Supp. 3d 294,
 298 (D. Mass. 2017). In the absence of having a relevant duty of care in tort, a
 governmental body cannot be found as a legal matter to be negligent or contributorily
 negligent because the first rule of tort liability is that a specific duty of care must exist
 before negligence can be found. *See Sanders v. Alger*, 394 P.3d 1083, 1085 (Ariz. 2017)
 (explaining that whether a duty of care is owed “is a threshold issue” and that “absent some
 duty, an action for negligence cannot be maintained.”); *Durr v. City of Scottsdale*, 2024
 WL 4664437, at *3 (D. Ariz. Nov. 4, 2024) (“The question of duty is a threshold issue and
 a question of law for the Court to decide ‘before the case-specific facts are considered.’”)
 (quoting *Gipson v. Casey*, 150 P.3d 228, 232 (Ariz. 2007)).

20 B. Additional specific issues raised by these interrogatories.

21 ROG 9 asks for “all communications . . . concerning remediating cartel related
 violence *within the borders of Mexico*” in the 20 years prior to Plaintiff’s filing of its
 complaint. As explained above—and Defendants well note in their request—the
 Government’s national security and police power decisions regarding cartels are made and
 performed in Mexico. Therefore, this requests inquiries into an “official act of a foreign
 sovereign performed within its territory.” *See Liu v. Republic of China*, 642 F. Supp. 297,

1 302 (N.D. Cal. 1986) (dismissal of claim against a sovereign is appropriate where finding
 2 fault on the sovereign's part would necessarily involve "probing inquiry" into the
 3 sovereign's "national security and intelligence affairs"); *Nocula v. UGS Corp.*, 520 F.3d
 4 719, 728 (7th Cir. 2008) (barring inquiry into a foreign sovereign's prosecution and
 5 investigation because "the decision of a foreign sovereign to exercise its police power
 6 through the enforcement of its criminal laws plainly qualifies as an act of state.").

7
 8 Additionally, Defendants assert that the Government is "well aware" that official
 9 government reports describing efforts to remediate cartel violence is "not what Defendants
 10 sought with these Interrogatories." That is simply incorrect. The reports are responsive.
 11 Without any ability to evaluate what Defendants would propose as far as custodians or
 12 search terms, the Government stands on its objections to producing any information on this
 13 topic beyond what is available in public reports.
 14

15 **ROG 10**, asking for "all communications . . . concerning coordinated efforts with
 16 foreign countries . . . regarding firearm violence, illegal firearm trafficking, or cartel
 17 violence," is similarly prohibited by the act of state and public duty doctrines. Agreements
 18 to coordinate with foreign powers are quintessential official acts because sovereigns decide
 19 to enter into these agreements within their own borders and because "the governmental
 20 action here could not have been taken by a private citizen." *Mujica v. Occidental Petroleum*
 21 *Corp.*, 381 F. Supp. 2d 1164, 1190 (C.D. Cal. 2005) (citing *Clayco Petroleum Corp. v.*
 22 *Occidental Petroleum Corp.*, 712 F.2d 404, 408 (9th Cir.1983)). Defendants' affirmative
 23 defenses would require the Court to render invalid the Government's coordinated efforts
 24 and agreements with other foreign sovereigns regarding national security risks such as
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1 firearms and cartel violence, affecting Mexican citizens in Mexican territory and, thus, is
 2 barred by the act of state doctrine. Even so, Defendants provide no indication in their
 3 motion or otherwise how the Government's efforts to remediate cartel violence, either
 4 domestically or as a matter of foreign policy relate to whether Defendants made illegal
 5 sales of weapons into Mexico.⁴

7 **ROG 11** requests that the Government identify “all [its] efforts to mitigate all costs,
 8 expenditures, damages, losses, or harms” attributable to Defendants’ conduct related to
 9 firearm trafficking. This request is barred by the act of state doctrine. The Government’s⁵
 10 domestic military actions, application of police power, national security decisions, and
 11 resource allocation choices are all quintessential official acts of state occurring entirely
 12 within that state’s borders that are barred under the act of state doctrine. *Sea Breeze Salt*,
 13 899 F.3d at 1075 (decisions about distribution *en masse* of Mexico’s sovereign resources
 14 are “exactly the kind of powers” that are “peculiar to sovereigns.”); *Roe v. Unocal Corp.*,
 15 70 F.Supp.2d 1073, 1079 (C.D. Cal. 1999) (military actions are quintessential acts of state)
 16 military actions are quintessential acts of state); *Liu*, 642 F. Supp. at 302.

20 **ROG Nos 12-13** ask for ‘all’ of the Government’s “efforts to investigate and
 21 prosecute” criminal cartels and those who possess illegal firearms in Mexico. For the same
 22 reasons stated previously, these requests are impermissible under the act of state doctrine.

25 ⁴ Additionally, Int. No. 10 should be counted as two interrogatories, since it seeks
 26 information both about “complaints” and “disagreements” with foreign governments as
 27 well as “joint efforts, task forces, bilateral agreements, or coordinated efforts.” These topics
 28 are discrete in the sense that they relate to very different types of interactions with foreign
 governments and are not “logically or factually subsumed within and necessarily related to
 the primary question.” *Berkadia Real Est.*, 2023 WL 2072494, at *7.

1 See *Bank Tejarat*, 723 F.Supp. at 521–22 (striking affirmative defenses of “offset” and
 2 “unclean” hands because they required a court to render invalid Iran’s restitution claim
 3 alleging that defendant violated Iranian law and injured a government-owned bank within
 4 Iranian territory); *see also Nocula*, 520 F.3d at 728.

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6 **X. Interrogatory No. 14-18: numerosity objections**

7

8 The Government maintains its numerosity objections to these requests. As discussed
 9 above, Int. No. 4 should be counted as 12 interrogatories, and Int. No. 10 should be counted
 10 as 2. In the event these objections are overruled, the Government stands on its Tiahrt
 11 objections (ECF.133) and its RIO RFP, and its overbreadth and proportionality objections.
 12 In the event that these objections are overruled, the Government requests that the Court
 13 order Defendants (again) to comply with their obligations to meet and confer with the
 14 Government regarding appropriate custodians and search terms.

15

16 **XI. Conclusion**

17

18 Defendants’ motion to compel should be denied. To the extent that Defendants state
 19 in the conclusion of their motion that the Court should “impose sanctions on Mexico for
 20 its egregious conduct,” there is no explanation of what this conduct is, or what would be
 21 the basis for the imposition of sanctions. The title of the motion also omits any reference
 22 to sanctions. The Government respectfully requests that in the event Defendants seek
 23 sanctions in some additional filing, that the Government be permitted to respond. Fed. R.
 24 Civ. P. 37(a).

1
2 Respectfully submitted this 15th day of May 2025,

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CERTIFICATE OF SERVICE

I, Ryan O'Neal, hereby certify that this document was filed with the Clerk of the Court via CM/ECF. Those attorneys who are registered with the Court's electronic filing systems may access this filing through the Court's CM/ECF system, and notice of this filing will be sent to these parties by operation of the Court's electronic filings system.

Dated: May 15, 2025

/s/ Ryan O'Neal
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